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January 11, 2023

Via ECF

Hon. Laura Taylor Swain, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Lopez v. Thermo Tech Mechanical, Inc., et al.*
Case No.: 20-cv-09113 (LTS) (BCM)

Dear Judge Swain:

We are counsel to Plaintiff and write in response to Defendants' Motion, dated January 6, 2023, in opposition to Plaintiff's Motion for conditional collective certification and in support of Defendants' Cross Motion for Judgment on the pleadings (Dkt. Nos. 69-71).

Pursuant to the Court's Order dated December 2, 2022, Plaintiff's Motion for conditional collective certification was reinstated as of December 5, 2022, and was to be handled by Judge Moses (Dkt. No. 65). On December 21, 2022, Judge Moses extended Defendants' time to oppose Plaintiff's Motion for conditional collective certification until January 6, 2023 (Dkt. No. 68). Despite the Court's explicit Orders mentioned above, on January 6, 2023, Defendants filed a notice of motion addressed to Judge Swain, in which they opposed Plaintiff's motion for conditional collective certification, and also moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (Dkt. Nos. 69-71).

Further, the certification in Defendants' notice of motion that "Defendants have used their best efforts to informally resolve the matters raised in the instant motion" is factually incorrect. On December 22, 2022, counsel for Plaintiff had a phone call with Defendants' counsel regarding Plaintiff's request for class discovery and Defendants' objections. During the meet and confer, Defendants did not mention their intention to file a Motion for Judgment on pleadings. Moreover, despite Defendants' certification, prior to its filing on ECF, Plaintiff did not receive any letter, telephonic or in-person discussion of Defendants' Motion for Judgment on the pleadings. Defendants are therefore not in compliance with Judge Swain's Individual Rule of Practice A(2)(b)(i)(1).

Despite the procedural deficiency in Defendants' Motion, Plaintiff wishes to amend the subject pleading. Pursuant to Judge Swain's Individual Rule of Practice A(2)(b)(ii), Plaintiff respectfully requests leave to amend the First Amended Complaint.

We thank Your Honor for considering this matter.

Respectfully submitted,

/s/ C.K. Lee
C.K. Lee, Esq.

cc: all parties via ECF